



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ESTEBAN R. SIA, et al.,
Accused.

SB-16-CRM-0580 to 0581,
For: Violation of Sec. 3(e) of
R.A. 3019 and Malversation
of Public Funds

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

MAR 28 2019

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RESOLUTION

VIVERO, J.:

This resolves the *Joint Motion to Quash with Urgent Motion to Defer Pre-Trial and Notice of Formal Entry of Appearance*¹, *Supplemental Motion to Quash Information or in the Alternative, Motion to Withdraw Plea of Guilty with Motion for Bill of Particulars*², *Reply*³ and *Rejoinder*⁴ filed by accused Esperato A. Del Socorro.

In his aforementioned *Joint Motion to Quash with Urgent Motion to Defer Pre-Trial and Notice of Formal Entry of Appearance*, accused Del Socorro prays that this Court quash the Informations in

¹ Dated 3 December 2018, pp. 1-6.

² Dated 2 January 2018 [sic], pp. 1-11.

³ Dated 22 January 2018 [sic], pp. 1-7.

⁴ Dated 10 February 2019, pp. 1-7.

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the present cases on the ground that the facts charged therein do not constitute an offense. He avers:

1. Being the Municipal Treasurer, his only role in the signing of cash advances for accused Esteban R. Sia, were to certify the availability of funds. Simply stated, his signatures were only included in the said documents to certify as to the availability of the said funds.
2. If he did not sign the said documents, only then would he have been liable for negligence or abandonment, yet as the Municipal Treasurer, he was duty bound to sign the documents.
3. Clearly the facts charged do not constitute an offense and the Information against him for both cases must necessary fail, and therefore the information quashed.

In its *Comment/Opposition (To the accused Esperato A. Del Socorro's Joint Motion to Quash with Urgent Motion to Defer Pre-Trial and Notice of Formal Entry of Appearance)*,⁵ the prosecution counters:

1. The facts alleged in the Informations in the Criminal Case No. SB-16-CRM-0580 to 0581 are sufficient to establish Violation of section 3(e) of the Republic Act No. 3019 and Malversation of Public Funds.
2. A Motion to Quash Information is a hypothetical admission of the facts stated in the Information.
3. The fundamental test in considering a motion to quash anchored on Section 3(a), above, is the sufficiency of the averments in the Informations, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. It is axiomatic that the Information must state every single fact necessary to constitute the offense charged, otherwise, a motion to quash on the ground that the information charges no offense may be properly sustained.

⁵ Dated 6 December 2018, pp. 1-6.



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4. Clearly, the facts charged alleged in the Informations, hypothetically admitted are sufficient to prove the guilt of the accused Del Socorro beyond reasonable doubt. The alleged lack of conspiracy between the accused Del Socorro and Sia are matters of evidence that should be threshed out after a full blown trial and not in a mere motion to quash.

In accused Del Socorro's *Supplemental Motion to Quash Information or in the Alternative, Motion to Withdraw Plea of Guilty with Motion for Bill of Particulars*,⁶ he argues that:

1. Both Informations failed to allege with particularity the basis for the amount of Two Million Sixty Three Thousand Four Hundred Twenty Pesos (Php 2,063,420.00), therefore failing to constitute an offense, it likewise violated his right to be informed of the nature and cause of the accusation against him.
2. There is a presumption of regularity of performance of official duties which the State has failed to overcome.
3. The Informations failed to show how he is in conspiracy with accused Esteban R. Sia when he is not charged with the duty of liquidating the latter's cash advances.
4. The Information are vague as it failed to allege how he committed a violation of article 217 of the Revised Penal Code, whether it was through abandonment or negligence, and/or the particulars of such abandonment or negligence.
5. In the alternative, it is moved that his plea of guilty already entered, be withdrawn, and that subsequently the present motion for bill of particulars be granted in order that he can intelligently prepare his defences, and subsequently enter another plea according to the amended information.

In its *Comment/Opposition (To the accused Esperato A. Del Socorro's Supplemental Motion to Quash Information or In The*

⁶ Supra, footnote 2.

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Alternative Motion to Withdraw Plea of Guilty with Motion for Bill of Particulars),⁷ the prosecution counters that:

1. The motion is a prohibited pleading under Revised Guidelines on Continuous Trial (A.M. No. 15-16-10 SC) for failure to comply with Section 9, Rule 116 of the Rules on Court on Criminal Procedure.
2. The Supplemental Motion to Quash is in the nature of a reply, which this Honorable Court expressly prohibited during the hearing on the Motion to Quash filed by accused-movant.
3. If the allegations in both Informations are hypothetically admitted, it is sufficient to establish the guilt of the accused movant on the offenses charged in the Informations.
4. The presumption of regularity in the performance of duty will not apply to accused-movant. Based on Commission on Audit Circular No. 97-002, accused Sia should not have been allowed to incur cash advances other than for travel.
5. The fact that he was able to receive the said cash advances only indicates the complicity and/or collusion among the accused considering that accused-movant and accused Kasayan's functions require them to participate in the preparation of vouchers and disbursement of funds.
6. The said cash advances could not have been released without their signatures and certification. As such, the presumption of regularity will not apply when the accused-movant clearly acted in violation of Commission on Audit's circulars.

On 6 February 2019, accused-movant filed his Reply (To the Comment/Opposition) while on 19 February 2019, he filed his Rejoinder. As such pleadings were filed without prior leave nor upon order of this Court, the same are merely noted and will not be considered in resolving the pending incidents.

⁷ Dated 30 January 2019, pp. 1-7.



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THE COURT'S RULING

The Court resolves to deny accused Del Socorro's *Motion to Quash and Supplemental Motion to Quash*.

A motion to quash on the ground that the facts charged do not constitute an offense⁸ assails the sufficiency of the Information. In resolving a motion to quash on such ground, the Court need not go beyond the allegations in the Information, which are hypothetically admitted.

In *People vs. Sandiganbayan (Fourth Division), Jessie Castillo, Melencio Arciaga and Emerenciano Arciaga*,⁹ the Supreme Court held:

"The main purpose of an Information is to ensure that an accused is formally informed of the facts and the acts constituting the offense charged. Where insufficient, an accused in a criminal case can file a motion to have the Information against him quashed and/or dismissed before he enters his plea. A motion to quash challenges the efficacy of an Information and compels the court to determine whether the Information suffices to require an accused to endure the rigors of a trial. Where the Information is insufficient and thus cannot be the basis of any valid conviction, the court must drop the case immediately and save an accused from the anxiety and convenience of a useless trial.

A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters aliunde. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information."

⁸ Rules of Court, Rule 117, Sec. 3(a).

⁹ G.R. No. 160619, September 9, 2015.



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To reiterate, the fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence aliunde or matters extrinsic of the information are not to be considered. To be sure, a motion to quash should be based on a defect in the information which is evident on its face.¹⁰

As correctly argued by the prosecution, if the allegations in both Informations are hypothetically admitted, it is sufficient to establish the guilt of the accused on the offense charged in the Informations, to wit:

1. In SB-16-CRM-0580 all the elements of violation of Section 3(e) of Republic Act no. 3019 are present:
 - a) The accused is a public officer discharging administrative, judicial or official functions;

Information on SB-16-CRM-0580 reads as follows:

"... accused Esteban R. Sia, a high ranking public officer, being then the Municipal Mayor of the said municipality, Esperato A. Del Socorro and Genera M. Kasayan, public officers, being then the Municipal Treasurer and Municipal Accountant, respectively of the same municipality"

- b) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

Information in SB-16-CRM-0580 reads as follows:

"... while in the discharge of their respective official functions, committing the offense in relation to office, taking advantage of their public positions, conniving and confederating together, and mutually helping each other, with deliberate intent, with evident bad faith and/or manifest partiality, with intent to cause undue injury to the local government unit of the Municipality of Ronda, did then and there willfully, unlawfully, and criminally fail to liquidate or return, without justifiable cause and despite repeated demands, public funds amounting to TWO MILLION SIXTY THREE

¹⁰ People vs. Odtuhan, G.R. No. 191566, July 17, 2013.

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THOSUAND FOUR HUNDRED TWENTY TWO PESOS AND 72/100 (Php 2,063,422.72), Philippine Currency, which accused Sia received as cash advances despite the fact that said cash advances were not allowed under COA Circular No. 97-002 not being for the purpose of travel"

- c) His action caused undue injury to any party, including the government, or entailed giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

Information on SB-CRM-0580 reads as follows:

"... accused in the course of performance of their official functions had given accused Sia unwarranted benefits and caused injury to the government, particularly the Municipality of Ronda, in the amount aforesated, to the detriment of public service and public interest"

2. In SB-CRM-0581 all the elements of Malversation of Public Funds, (Article 217 of the Revised Penal Code) are likewise present:

- a) The accused is a public officer –

Information on SB-16-CRM-0581 reads as follows:

"... accused Esperato A. Del Socorro and Genera M. Kasayan, being then the Municipal Treasurer and Municipal Accountant, respectively, of Ronda Cebu.."

- b) That he had the custody or control of funds or property by reason of the duties of his office.
- c) He appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them –

Information in SB-CRM-0581 reads as follows:

"... while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official position, conspiring and confederating with Esteban R. Sia, a high ranking public officer, with Salary Grade 27, being then the Municipal Mayor of the same municipality, did then and there,

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willfully, unlawfully and feloniously consent and or permit through abandonment or negligence accused Esteban R. Sia to misappropriate, take, misapply and convert to his own personal use and benefit the amount of TWO MILLION SIXTY THREE THOUSAND FOUR HUNDRED TWENTY TWO PESOS AND 72/100 (Php 2,063,422.72)..."

- d) Those funds or property were public funds or property for which he was accountable.

Information on SB-16-CRM-1081 reads as follows:

"... which accused Sia received as cash advances, such amount being a public fund belonging to the aforementioned municipality and under their control for which they were accountable, to the damage and prejudice of the government, particularly the Municipality of Ronda, Cebu in the aforesaid amount..."

The Information in SB-CRM-0580 sufficiently alleges all the elements constitutive of violation of Section 3(e) of R.A. No. 3019, as amended. In the same vein, the Information in SB-CRM-0581 sufficiently allege all the elements constitutive of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code. To reiterate, an information needs only to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts amounted to undue injury or damage - matters that are appropriate for trial.¹¹

This Court similarly finds accused Del Socorro's *Alternative Motion to Withdraw Plea of Guilty with Motion for Bill of Particulars* to be bereft of merit. Under the Revised Guidelines on Continuous Trial (A.M. No. 15-16-10 SC) a motion for bill of particulars that does not conform to Section 9, Rule 116 shall be considered as a prohibited motion which shall be denied outright before the scheduled arraignment without need of comment and/ or opposition. Further, Section 9, Rule 116 of the Revised Rules of Criminal Procedure provides that **the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial.** The motion shall specify the alleged defects of the complaint

¹¹ Lazarte v. Sandiganbayan, G.R. No. 180122, March 13, 2009; Go vs. Bangko Sentral ng Pilipinas, G.R. No. 178429, October 23, 2009; Willard B. Riano, CRIMINAL PROCEDURE: THE BAR LECTURES SERIES, 2011, page 456.

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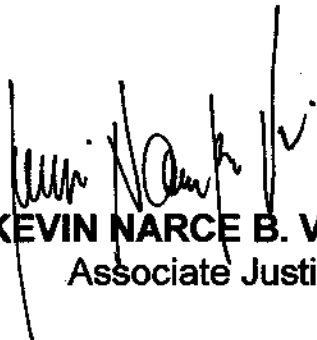
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or information and the details desired. (Emphasis Supplied) As the prosecution correctly pointed out, considering the accused-movant had been arraigned more than a year ago, it is too late in the day for him to claim that the charged against him was vague and general.

WHEREFORE, premises considered, the *Motion to Quash*, *Supplemental Motion to Quash*, *Motion to Withdraw Plea of Guilty* and *Motion for Bill of Particulars* of accused Del Socorro are hereby DENIED for lack of merit. The notice of formal entry of appearance filed by the counsel of the accused is NOTED.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice